IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

WP(C).No. 20461 of 2007(J)

PETITIONER:

DARIUS MARSHALL,
MANAGING PARTNER OF THE ERSTWHILE SERVICE STATION
MOTOR ACCESSORIES CO., VELLAYIL ROAD,
KOZHIKODE-673 032.

BY ADV. SRI.P.R.RAMACHANDRA MENON

RESPONDENTS:
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1. SUB INSPECTOR OF POLICE,
NADAKKAVU POLICE STATION, KOZHIKODE.

2. THE COMMISSIONER OF POLICE, KOZHIKODE.

3. THE KOZHIKODE JILLA MOTOR AND
ENGINEERING WORKER'S UNION (CITU)(R.NO.314/68),
REP. BY ITS SECRETARY, CITY COMMITTEE,17/1598,
POOTHERI BUILDINGS, PAVAMANI ROAD,KOZHIKODE-673004

4. MR.V. BALAKRIHNAN,
SECRETARY, SSMA CO. EMPLOYEES UNION-CITU,
VELLAYIL ROAD, KOZHIKODE-673 032.

BY ADV. SRI.JACOB ABRAHAM R3 AND R4
GOVERNMENT PLEADER SRI. SALIM P.A.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 20461/2007 J

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE CERTIFICATE DT. 10/7/06 BY THE CHARTERED ACCOUNTANT OF THE PETITIONER, SHOWING THE NET FINANCIAL POSITION OF THE PETITIONER'S ESTABLISHMENT DURING THE YEARS 2001-02 TO 2005-06.

EXT.P2. COPY OF THE GO RT NO. 922/07 /LBR DT. 9/4/07 REFERRING THE DISPUTE FOR ADJUDICATION.

EXT.P3. COPY OF THE INTERIM ORDER DT. 8/8/06 BY THIS COURT IN WPC NO. 21030/06.

EXT.P3A. COPY OF THE JUDGMENT DT. 16/8/06 BY THIS COURT IN WPC NO. 21030/06.

EXT.P4. COPIES OF THE REPRESENTATIONS DT.20/10/06, 30/10/06 AND 2/11/06 PREFERRED BY THE WIFE OF THE PETITIONER BEFORE THE POLICE.

EXT.P5. COPY OF THE REPRESENTATION DT. 8/12/06 FILED BY THE PETITIONER BEFORE THE CHAIRMAN MINORITIES COMMISSION, THIRUVANANTHAPURAM.

EXT.P5A. COPY OF THE -DO- DT. 23/12/06 FILED BY THE PETITIONER BEFORE THE CHAIRMAN HUMAN RIGHTS COMMISSION.

EXT.P6. COPY OF THE REPRESENTATION DT. 24/12/06 FILED BY THE PETITIONER BEFORE THE R1.

EXT.P7. COPY OF THE PETITIONS DT. 25/1/07 FILED BY THE WIFE OF THE PETITIONER BEFORE THE R1.

EXT.P8. COPY OF THE PETITIONS DT. 12/2/07 AND 16/3/07 BY THE PETITIONER BEFORE THE POLICE.

EXT.P9. COPY OF THE PETITION FILED BY THE PETITIONER DT. 21/3/07 BEFORE THE R1.

EXT.P10. COPY OF THE FIR IN RESPECT OF CR. NO. 122/07 REGISTERED BY THE R1.

EXT.P11. COPY OF THE PETITION DT. 16/4/07 BY THE PTR,BEFORE THE R1.

RESPONDENT'S EXHIBITS

EXT.R3A. COPY OF THE ORDER OF REFERENCE BEARING NO. GO RT NO. 3287/LBR DT. 22/12/06 BY THE UNDER SECRETARY TO GOVT.

EXT.R3B. COPY OF THE PLAINT IN OS NO. 459/06 OF THE SUB COURT, KOZHIKODE.

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K.BALAKRISHNAN NAIR &
K.T.SANKARAN, JJ.

WPC NO.20461 OF 2007-J

Order

Balakrishnan Nair,J.

The petitioner was running a workshop. Since the unit cannot be run profitably any more, he closed it down on 15.07.2006, after giving one month's notice, which was served on the workmen on 15.06.2006. The dispute regarding the closure of the unit has been referred by the Government under Section 10(1) of the Industrial Disputes Act for adjudication to the Labour Court, Kozhikode. But, after the closure of the unit, the workmen have put up a pandal before the workshop and they are sitting there and causing obstruction to the free ingress and egress to the petitioner's premises. They also tried to cause trouble in the workshop owned by his wife. The petitioner's wife moved this Court and obtained Ext.P3 interim order. The said Writ Petition was later disposed of by Ext.P3(a) judgment. The petitioner submits, the workmen are holding demonstrations and shouting abusive slogans. They are also threatening the petitioner and his family members and also trying to damage another building being constructed by the petitioner. Notwithstanding his representations, the Police is not taking any effective steps. Hence this Writ Petition, seeking the following reliefs :

"i. declare that the 3rd and 4th respondents or anybody under them cannot cause any forceful obstruction to the petitioner, his family or representatives ;

ii. issue a writ of mandamus or such other appropriate writ or order, directing the 1st and 2nd respondents to afford adequate and effective protection to the petitioner, his family and representatives and the properties against the atrocious/high-handed action of the 3rd and 4th respondents ;

iii. issue a writ of mandamus or such other appropriate writ or order, directing the 1st and 2nd respondents to afford adequate and effective protection to the petitioner and his representatives to have free ingress and egress to the establishment SSMAC, which is lying closed down under Sec.25 FFF of the ID Act from 15.07.2006 and for removing and disposing the machinery/fixtures which are getting rusted and damaged for lying idle ;

iv. issue a writ of mandamus or such other appropriate writ or order, directing the 1st and 2nd respondents to see that the pandal and unauthorised obstruction put forth by the 3rd and 4th respondents in front of the gate of the petitioner's establishment is shifted to a

minimum distance of 100 Mtrs from the gate."

2. The 4th respondent has filed a counter affidavit, resisting the prayers in the Writ Petition. He has also produced a copy of Ext.R3(b) plaint in OS No.459/06 filed by the petitioner herein and others, seeking the following reliefs :

"a) restrain the defendants, their members and men from interfering or obstructing in any manner, the peaceful possession, enjoyment and use of the plaint schedule property by the plaintiffs and also from committing any acts of trespass or waste in the plaint schedule property or from doing any acts in derogation of the right, title, interest or ownership of the plaintiffs by a decree of permanent prohibitory injunction.

b) direct the defendants to remove/efface the graffity including the caricatures and posters and restore the wall and gate to its original position within a time period to be fixed by this Hon'ble Court by a decree of mandatory injunction and in the event of failure to do so by the defendants, permit the plaintiffs to do the same at the costs of the defendants.

c) direct the defendants to pay the sum of Rs.1,00,000/- as damages for the loss, injury and hardship caused and

occasioned to the plaintiffs on account of the defamation and illegal acts of the defendants.

d) direct the defendants to pay the costs of this proceedings

e) to grant such other further relief that the plaintiff may pray for from time to time and this Honourable Court deems fit to grant."

The 4th respondent submits, the filing of the suit was not mentioned in this Writ Petition. Further, many of the reliefs sought therein are again sought from this Court. The 4th respondent also submits that if the petitioner removes the machinery and sells them, three may not be sufficient assets left to satisfy the award that may be passed in their favour by the Labour Court pursuant to Ext.P2 reference. So, they pray for dismissing the Writ Petition.

3. When this Writ Petition was admitted on 04.07.2007, this Court issued an interim direction to grant protection to the life of the petitioner. The learned Government Pleader submitted that protection is being extended to the petitioner as ordered by this Court. Since it is a labour dispute, the Police is not interfering in the matter.

4. We feel that the non-mentioning of the suit filed in December 2006 in this Writ Petition disentitles the petitioner in the normal course, to seek reliefs from this

Court. All the reliefs which the petitioner has sought from this Court, he can get from the civil court. Some of the prayers in the Writ Petition are overlapping the prayers in the suit also. Therefore, for ingress and egress and also for removing the machinery therein, the petitioner has to work out his remedy before the Civil Court. But, the Police shall ensure that law and order is maintained and breach of peace is averted. If there is any threat to the life of the petitioner or his family members, he shall alert to the Police and in that event, the Police shall vigilantly look into that and do the needful.

The Writ Petition is disposed of as above.

K.BALAKRISHNAN NAIR,JUDGE

03.08.2007 **K.T.SANKARAN, JUDGE**

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